



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,441	06/01/2001	Dennis G. Olson	SUREB-56121	2095

7590 12/02/2003

ELLSWORTH R. ROSTON, ESQ.
FULWIDER PATTON LEE & UTECHT, LLO
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES, CA 90045

EXAMINER

GURZO, PAUL M

ART UNIT	PAPER NUMBER
----------	--------------

2881

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/872,441

Applicant(s)

OLSON, DENNIS G.

Examiner

Paul Gurzo

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: G. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "12" and "16" have both been used to designate the article. In addition, reference characters "20", "22", and "28" have been used to designate the fixture. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2,3,5, and 10-44 stand rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. As the claimed invention is best understood in light of the specification, the fixture acts to provide a substantial uniformity in the radiation dose at the different positions in the article within the particular limits (page 12, lines 6-9). However, the description and accompanying figures do not depict how this is possible. Notably, the fixture is merely an aluminum, steel or plastic material, but there is no teaching of how these materials will, in any way, affect the uniformity. Namely, there is no magnetic or electric field

Art Unit: 2881

that will change the beam dosage to provide uniformity, nor is there rotation of either the article or the electron beam that will achieve the desired uniformity. The fixture merely acts to block the radiation at different areas, but the fixture, as depicted in Fig. 3-5, does not in any way block the beam. On the contrary, there is no distortion of the beam of any kind because the beam has a clear line of sight path to irradiate the article. Therefore, the fixture will not achieve any type of adequate uniform absorption.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2,3,5 and 10-44 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As stated above, the specification does not adequately enable the claimed invention because the fixture will not provide any type of increased absorption uniformity. There is no application of a magnetic or electric field that will affect the irradiation of the beam, and there is no rotation of the article or the beam source that could lead to desired uniformity. Because of this, it is not clear how the fixture will lead to any type of uniform irradiation distribution.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 2881

Claims 2,3,5 and 10-44 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The specification states that the fixture acts to provide a substantial uniformity in the radiation dose at the different positions in the article within the particular limits (page 12, lines 6-9). However, the claims only claim absorbing radiation depending upon the irregularities in the characteristics of the article at the different positions. Therefore, as the invention is claimed, it is only concerned with absorption due to irregularities, which is not consistent with the specification that is concerned with uniformity.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4, and 6-9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Welt et al. (5,400,382).

Regarding claims 1,4, 6, and 8-9, 382 teaches a method of irradiating an article from a radiation source (27) including the steps of providing the radiation from the source (27) in a particular direction, absorbing the radiation energy in accordance with the irregularities in the article to maintain desired radiation dosage, and moving the article past the radiation from the source in a direction transverse to the particular direction (col. 3, lines 10-15, col. 4, lines 1-17, col. 5, lines 48-52, and Fig. 1). This will achieve the desired uniformity of the radiation dosage

Art Unit: 2881

(col. 7, lines 60-65). Further, 382 teaches controlling the speed (col. 3, lines 49-54), and it is inherent that substantially constant speed can be achieved. In addition, 382 compensates for irregularities while moving the article past the radiation at a particular distance from the source (Fig. 1).

Response to Arguments

Applicant's arguments filed 10/14/03 have been fully considered but they are not persuasive. Applicant argues that the prior art does not teach absorption at different positions in an article based on irregularities. However, Welt is concerned with a method for controllably irradiating materials within a system that will afford an effective protocol for product preservation, sanitization or sterilization as well as safety (Abstract). This teaches on the providing uniformity in radiation dosage. Further, it is inherent that the sensor means for controlling the position of the tracks, placement of the radiation source, and dosage of radiation (col. 4, lines 1-17) is used because there are irregularities in the article. If there were no irregularities then there would be no need to adjust the numerous characteristics of the system.

Applicant also argues that the specification does adequately teach how the method and system works and that it will operate correctly. The Examiner respectfully disagrees. It is not clear how this fixture properly absorbs radiation to achieve a proper, uniform dosage. For example, Applicant teaches that the article does not have to be disposed snugly within the fixture (page 10, lines 15-16). Because it is not snugly fixed, there will arise a lack of uniformity because the radiation does not pass through the same amount of material, leading to a greater dosage in the areas that are not snugly fixed. Further, Fig.4 and 5 clearly depict a substantial spacing between the fixture and the article, and this will reduce uniformity. In addition, the

Art Unit: 2881

fixture can be made of any material that substantially corresponds to the article. However, it is clear that any deviation in the construction of the article and fixture will greatly reduce the effectiveness of the fixture's intended use. As such, it is still unclear how this fixture will properly absorb the radiation. It is obvious that numerous irregularities in dosage strength will still be present due to the spacing problems and difference in absorption qualities due to different materials being present. Therefore, the Examiner maintains that the fixture will not achieve any type of adequate uniform absorption.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Gurzo whose telephone number is (703) 306-0532. The examiner can normally be reached on M-Thurs. 7:30 - 6:00.

Art Unit: 2881

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Lee can be reached on (703) 308-4116. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

PMG
November 18, 2003



JOHN R. LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800